

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 31 CUTTACK, WEDNESDAY, JANUARY 7, 2015/PAUSA 17, 1936

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 27th December 2014

No. 10580—IR(ID)-10/2013-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th December 2014 in Industrial Dispute Case No. 54/2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Ortel Communication Ltd., C-1, Chandrasekharpur, Bhubaneswar and its Workman Shri Jeevan Mohapatra was filed by the workman for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 54 OF 2013

Dated the 10th December 2014

Present :

Shri B. C. Rath, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of, . . . First Party—Management
M/s Ortel Communication Ltd.,
C-1, Chandrasekharpur,
Bhubaneswar.

And

Its Workman, . . . Second Party—Workman
Shri Jeevan Mohapatra,
S/o Rabi Narayan Mohapatra,
At. Kalyaninagar (Backside of
Block Colony),
Industrial Police Station,
Balasore.

Appearances :

Shri J. Mohanty, Advocate	. .	For the First Party—Management
---------------------------	-----	--------------------------------

Shri S. B. Mohanty, Advocate	. .	For the Second Party—Workman
------------------------------	-----	------------------------------

AWARD

The Government of Odisha, in the Labour & E.S.I. Department in exercise of powers conferred upon it by sub-section(5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute for adjudication by this Court vide their Letter No.—13518 IR(ID)-10/2013-LESI., dated the 28th November 2013.

"Whether the Jeevan Mohapatra, Assistant Manager(Operation) is a workman within the meaning as defined under Sec.2(2) of the I.D. Act, 1947? If so, whether the action of the Management of M/s. Ortel Communication Ltd., Chandrasekharpur, Bhubaneswar in terminating the services of Shri Jeevan Mohapatra, Assistant Manager (Operation) with effect from the 30th April 2012 is legal and/or justified ? If not, what relief Shri Mohapatra is entitled to ?"

2. The case of the second party in short, is that on being selected in an interview he was appointed by the first party as an Executive Trainee on the 22nd September 2004 and after completion of his probation period he was posted at Bhubaneswar to deal with the Operational and Technical work of the management. After working under various stations he was posted at Baripada on the 28th March 2012 and while continuing there he received an order dispensing with his service with effect from the 30th April 2012. According to him, such termination amounts to retrenchment of his service and the same is illegal being in contravention of the provisions of Section 25-N of the Act. The specific assertion of the second party is that he being a 'workman' as defined in Section 2(s) of the Act, the first party ought to have complied with the provisions of the Act while dispensing with his service and violation of such provisions on the part of the first party entitles him for his reinstatement in service with full back wages and other service benefits.

3. The first party management entered contest in the dispute and filed its written statement stating therein, *inter alia*, that since the second party was discharging managerial functions being posted under it as Assistant Manager (Operations) of the Baripada Unit and was drawing a monthly salary of Rs.25,256, he is not a 'workman' as defined under the Act and as such the reliefs claimed by him in the present proceeding cannot be extended in his favour. Further stand of the management is that the second party after his termination having got all his dues from the management the dispute is not maintainable.

In the matter of termination of service of the second party, the specific stand of the first party is that during continuance of the second party under it he having been found to have involved in various acts of illegalities including misappropriation of money amounting to serious misconduct as per the terms of service, the management lost confidence on him and accordingly terminated his service with effect from the 30th April 2012 by following due prescribed procedure and in connection

with the same lodged a complaint before the Bhadrak Town Police Station vide P.S. Case No.103(a), dated the 12th May 2012. It is stated that upon such termination of service the second party having received all his dues from the first party is not entitled to any relief claimed in the present proceeding.

4. In his rejoinder to the written statement filed by the second party he has reiterated his stand that in view of his nature of duties performed under the first party coupled with the pronouncements of the Hon'ble Apex Court, he squarely comes under the definition of 'workman' and as such the case is maintainable in this forum.

5. Keeping in view, the respective stand of the parties, the following issues have been settled:—

ISSUES

- (i) Whether Shri Jeevan Mohapatra, Assistant Manager(Operation) is a 'workman' within the meaning as defined u/s 2(s) of the I.D. Act ?
- (ii) If so, whether the action of the Management of M/s Ortel Communications Ltd., Chandrasekharapur, Bhubaneswar in terminating the services of Shri Jeevan Mohapatra, Assistant Manager(Operation) with effect from the 30th April 2012 is legal and/or justified?
- (iii) If not, what relief Shri Mohapatra is entitled to ?

6. In order to substantiate their respective stand both parties have led oral as well as documentary evidence. While the second party has examined himself and proved documents marked Exts.1 to 14, the first party in its turn has examined two witnesses and proved documents which have been marked Exts.A to F.

FINDINGS

7. *Issue No.(1)*—The first party management has raised objection to the maintainability of the reference contending that the second party is not a 'workman' within the definition of Section 2(s) of the Act as he was posted as Assistant Manager, Operational and being the Location Head his primary job was to supervise the work of the Technicians and contract workers, besides he was drawing a monthly salary of Rs.25,256 at the time of his alleged termination of service. In that view of the matter, the issue No.1 being very vital and relevant to the result of the reference it is felt appropriate to deal with that question first.

Undisputedly, the oral testimony of the second party as well as the documents like salary slips (Exts.13&14) pressed into evidence by the second party reveals that he was receiving Rs.25,256 per month towards his Basic Pay, House Rent Allowance, Conveyance Allowance and other allowance. Even if the Other Allowance to the tune of Rs.10,456 is deducted from the gross salary of the second party, his monthly wages comes around more than Rs.10,000. It is the contention of the first party management that the nature of job of the second party being managerial and supervisory

in nature and his monthly wages being more than Rs.10,000, he cannot be covered under the definition of 'workman' as contemplated in the Act. To strengthen its contention reliance has been placed on the principles set out by the Hon'ble Apex Court in the case of Hussain Mithu Mhasvadkar *Vrs. Bombay Iron and Steel Labour Board* and another, reported in AIR 2001 SC 3290.

On the other hand, it is the pleading and contention of the second party that his nature of job being purely technical, he is a 'workman' as defined under the Act and as such the provision of Section 2(s)(iv) is not applicable to him despite the fact that his monthly wages was more than Rs.10,000. According to him, his posting with the designation as Assistant Manager, Operational has nothing to do with the nature of his job to disqualify him as a 'workman'. The learned counsel appearing for the second party has further contended that the nature of duties performed by an employee are relevant to determine his/her status as a 'workman' but not his designation, at the time of termination. The main job of the second party being purely technical along with additional work of supervision of skilled and unskilled labourers, he is covered by the term 'workman' as defined u/s 2(s) of the Act and it would be erroneous to exclude him from the term 'workman' on the basis of the exception provided in Section 2(s)(iv) of the Act. To strengthen his argument he has placed reliance on the findings of our own Hon'ble High Court in the case of Kedareswar Mohapatra *Vrs. The Presiding Officer, Labour Court, Bhubaneswar* and another, reported in 2012(I) ILR-CUT-889.

8. It is well settled in the case of D. P. Maheswari *Vrs. Delhi Administration* and others, 1983(47)FLR 477(SC); M/s Anand Bazar Patrika (P) Ltd. its workmen, 1969(18) FLR 186(SC) and in many other decisions of the Hon'ble Apex Court including the one cited by the second party in the case of Kedareswar Mohapatra (*supra*) that the principal duties being performed by an employee are to be considered for the purpose of determining as to the real status of the employee, whether such employee had been discharging administrative, managerial or supervisory work. It has been held that even if at times managerial, supervisory or administrative works were required to be performed by an employee, such occasional performance by itself does not determine the real status of the employee but it is the principal or major duty performed by the employee which determines the employee's real status. In the cases under reference the Hon'ble Apex Court have also indicated various tests for the purpose of determining whether an employee is performing skilled, unskilled, technical or clerical nature of work or administrative or managerial or supervisory. It is needless to mention here that as per the observations of the Hon'ble Apex Court in the cases of May & Baker (India) Ltd. *Vrs. Their workmen* [1961 (2) FLR 594(SC)]; Western India Match Company Ltd. *Vrs. Their workmen* [1963(7) FLR 256(SC)]; Burmah Shell Oil Storage & Distribution Company (India) Ltd. *Vrs. Burma Shell Management Staff Association* and others [1971(22) FLR 11(SC)]; S. K. Verma *Vrs. Mahesh Chandra* and another [1983(47) FLR 313(SC)] and in many other cases including the decision of the Hon'ble Apex Court referred to by the first party management in the case of Hussain Mithu Mhasvadkar (*supra*), if every employee of an industry was to be a workman except those mentioned in the four exceptions in Section 2(s) of the Act, the classifications i.e.

manual, supervisory, technical and clerical need not have been mentioned in the definition of 'workman' and the 'workman' could not have been defined so as to include every person employed in an industry except where he was covered by one of the exceptions. The specification of four types of work, according to the Hon'ble Apex Court, was obviously intended to lay down that an employee was to be a 'workman' only if he was employed to do work of one of those types described in Section 2(s) of the Act.

In the case of *G.M. Pillai Vrs. A.P. Lakhanika*, reported in 1998 LLR 310, the Hon'ble Bombay High Court have observed that in determining the question whether a person employed by the employer is a 'workman' u/s 2(s) of the Act or not, the Court has principally to see the main or substantial work for which the employee has been employed and engaged to do. Neither the designation of the employee is decisive nor any incidental work that may be done or required to be done by such employee shall get him outside the purview of 'workman' if the principal job and the nature of employment of such employee is manual, technical or clerical. In the hierarchy of employees, some sort of supervision by the employee over the employees of lower ladder without any control may not by itself be sufficient to being that employee in the category of supervisor, yet if the principal job of that employee is to oversee the work of employees who are in the lower ladder in the hierarchy and he has some sort of independent discretion and judgement, obviously such employee would fall within the category of supervisor. Each case would depend on the nature of duties pre-dominantly or primarily performed by such employee and whether such function was supervisory or not would have to be decided on facts keeping in mind the correct principle.

Testing the case in hand on the principles set out by the Hon'ble Apex Court as well as other High Courts, it is found that oral testimony has been led by the first party management to establish that the nature of job of the second party is managerial. Being the Location Head at the place of his posting he was supposed to manage the entire work of the Branch. According to the first party management, the second party is not a 'workman' being designated and posted as Assistant Manager, Operational and having been entrusted to do managerial work. But, not a single scrap of paper is filed on behalf of the first party management to show the job assignments supposed to be discharged by the second party being posted as Assistant Manager, Operational. However, it is emerging from Para. 4 of the examination-in-chief of the second party that after his joining in the Organisation of the first party he was supervising the works of the unskilled and skilled workmen (Labourers and Technicians). In his cross examination he has again admitted that his nature of job was to supervise the work of Technicians and the contract workers. Thus, on his own version the nature of job discharged by the second party is supervisory in nature. Furthermore, the second party has admitted that he was receiving more than Rs.23,000 towards his monthly salary and allowances at the time of his alleged retrenchment as per his pay slips filed by him vide Exts. 13 and 14 and from the oral as well as documentary evidence led by the first party management there is no serious dispute to the fact that the second party was receiving more than Rs.10,000 per month as his basic salary

besides he was receiving other allowances, totalling a gross amount of Rs.25,256 per month. In the above facts and circumstances, the nature of job of the second party having been purely supervisory in nature and his monthly salary being near about Rs.25,000, he cannot be regarded as a 'workman' in view of the exception (iv) provided to Section 2(s) of the Act.

Accordingly, Issue No.1 is answered against the second party.

8. *Issue Nos.(2)&(3)*—It appears from the pleadings and evidence of the parties that there is no serious dispute to the fact that the service of the second party was terminated on the ground of misconduct without holding any departmental proceeding or enquiry as required to be held under the Standing Orders of the Company. No material is also placed on behalf of the first party management disclosing that there has been compliance of the provisions of either Section 25-F or 25-N of the Act. Furthermore, it cannot be over sighted that a criminal case of misappropriation was allegedly initiated by the first party subsequent to the termination of service of the second party. As such, the termination of service on account of initiation of a criminal proceeding against the second party without holding a departmental enquiry to find out the guilt of the second party would not be a sufficient reason for his termination without resorting to the provisions as enumerated in the Act. Therefore, the action of the first party management in terminating the services of the second party appears to be illegal and unjustified. Be that as it may, when this Tribunal has already arrived at a conclusion under Issue No.1 (*supra*) to the effect that the second party is not a 'workman', he is not entitled to any relief.

Both the issues are answered accordingly.

9. In the result, it is held that the second party having failed to establish that he is a 'workman' within the purview of Section 2(s) of the Act, he is not entitled to any relief in the present proceeding.

Dictated and corrected by me.

B. C. RATH
10-12-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

B. C. RATH
10-12-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government